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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FORTIS BANK S.A./N.V., CAYMAN ISLANDS BRANCH and MANUFACTURERS AND TRADERS TRUST COMPANY, solely in its capacity as Trustee, Plaintiffs, -against- BROOKLINE FINANCING LLC, BROOKLINE ORIGINATION LLC, BROOKLINE SERVICING LLC, CSC LOGIC, INC., KENNEDY FUNDING, INC., HUDSON CREDIT CORP., HUDSON RETAIL-JFK, INC., HUDSON NEWS DISTRIBUTORS, LLC, HUDSON MEDIA, INC., and JAMES COHEN, Defendants.	No.: 10-Civ- COMPLAINT

As and for their complaint, Plaintiffs Fortis Bank S.A./N.V., Cayman Islands Branch ("Fortis Bank") and Manufacturers and Traders Trust Company, solely in its capacity as trustee ("M&T Bank" or "Trustee"), pursuant to a Loan and Servicing Agreement dated as of January 23, 2007 (as amended and restated, the "Loan and Servicing Agreement"), allege as follows:

Nature of the Action

1. This action seeks (i) approximately $282 million due under the Loan and Servicing Agreement and a Note (as defined in the Loan and Servicing Agreement, as are all capitalized terms in this Complaint unless otherwise noted), plus interest; (ii) an order directing the foreclosure and sale of the collateral securing that indebtedness; (iii) damages arising out of additional breaches of the Loan and Servicing Agreement and related Transaction Documents; and (iv) the costs and expenses associated with the enforcement of the Loan and Servicing Agreement and the Transaction Documents.

2. Plaintiff Fortis Bank is the Lender under the Loan and Servicing Agreement. Defendant Kennedy Funding, Inc. ("Kennedy Funding") is a commercial real estate lender. On information and belief, Kennedy Funding formed, or caused to be formed, three special purpose entities, Defendants Brookline Financing LLC ("Brookline Financing"), Brookline Origination LLC ("Brookline Origination"), and Brookline Servicing LLC ("Brookline Servicing"), to act, respectively, as the Borrower, the Originator, and the Servicer under the Loan and Servicing Agreement.

3. Pursuant to the Loan and Servicing Agreement, Fortis Bank made a $200 million revolving credit facility available to Brookline Financing, which was subsequently increased to $300 million. From time to time and subject to certain terms and conditions, Brookline Financing drew down funds under the facility in order to purchase eligible real estate

loans from Brookline Origination. As security for the funds advanced by Fortis Bank, Brookline Financing assigned to the Trustee, for the benefit of Fortis Bank and the other Secured Parties, its interest in the Brookline Origination loans.

4. Brookline Financing's ability to request advances from Fortis Bank was subject to credit line availability and compliance with certain liquidity restrictions and other limitations. In June 2009, Brookline Servicing submitted a servicing report indicating that Brookline Financing had exceeded its maximum availability under the Loan and Servicing Agreement, that it had missed a key borrowing ratio, and that more than 35% of the underlying loan portfolio consisted of Defaulted Loans (which were more than six months past due). Each of these was a Liquidation Event under the Loan and Servicing Agreement.

5. Under the Loan and Servicing Agreement, Brookline Financing has to cure each Liquidation Event within a specified period of time or it becomes a Termination Event. Fortis Bank notified Brookline Financing of the Liquidation Events in paragraph 4 above, but Brookline Financing did not reduce its outstanding principal balance or otherwise cure these Liquidation Events.

6. In July 2009, the first Termination Event occurred based on Brookline Financing exceeding its maximum availability for more than 30 days. In September 2009, Fortis Bank declared, pursuant to the Loan and Servicing Agreement, that the entire outstanding amount was immediately due and payable. It also directed the Trustee to require Brookline Financing and Brookline Origination to assemble and deliver the collateral.

7. In a letter agreement, dated October 28, 2009, Brookline Financing, Brookline Origination, Brookline Servicing, and Kennedy Funding each acknowledged that the Liquidation Events had occurred and that certain Termination Events existed. They also agreed

and acknowledged that the principal balance owing to Fortis Bank as of October 28, 2009 was $283,217,056.49.

8. After Fortis Bank declared that the entire outstanding balance was immediately due and payable, three additional Termination Events occurred as a result of Brookline Financing's failure to pay a certain fee when due and its failure to cure additional Liquidation Events within the applicable time period. Brookline Financing remains in default and has not paid the amount outstanding. Neither Brookline Financing nor Brookline Origination has delivered the collateral.

9. On information and belief, Brookline Origination has also failed properly to assign to Brookline Financing its interest in at least five Loans and Participations, and Brookline Servicing and CSC Logic, Inc. ("CSC"), the Master Servicer under the Loan and Servicing Agreement, has failed to ensure that these assignments occurred. These failures constitute additional breaches under the Loan and Servicing Agreement and related documents.

10. Brookline Financing has further breached the Loan and Servicing Agreement by consenting to the amendment of several Loans included in the Collateral without first obtaining Fortis Bank's written consent. On information and belief, Kennedy Funding procured these breaches by working with and directing Brookline Financing to consent to these amendments knowing that Fortis Bank's written consent was required and had not been obtained.

Jurisdiction and Venue

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332. There is complete diversity between the Plaintiffs and the Defendants, and the amount in controversy exceeds $75,000.

12. This Court has personal jurisdiction over each Defendant. Each Defendant consents to the jurisdiction of this Court pursuant to Section 12.6 of the Loan and Servicing Agreement or, in the case of Defendant Kennedy Funding, pursuant to Section 16(a) of its Performance Guaranty.

13. Venue in this judicial district is proper under 28 U.S.C. § 1391. Pursuant to Section 12.6 of the Loan Servicing Agreement and Section 16(b) of the Performance Guaranty, each Defendant waives any objection that it might have to venue in this district.

The Parties

14. Plaintiff Fortis Bank is the Lender under the Loan and Servicing Agreement. Fortis Bank is a banking corporation organized under the laws of the Cayman Islands, with its principal place of business at 802 West Bay Road, Grand Pavilion Commercial Centre, Grand Cayman, KY1-1104.

15. Plaintiff M&T Bank is the Trustee under the Loan and Servicing Agreement. M&T Bank is a corporation organized under the laws of the State of New York, with its principal place of business at One M&T Plaza, Buffalo, New York 14203. M&T Bank sues solely in its capacity as Trustee.

16. Defendant Brookline Financing is the Borrower under the Loan and Servicing Agreement. On information and belief, Brookline Financing is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at Two University Plaza, Hackensack, New Jersey 07601. Brookline Financing is wholly owned by Brookline Origination.

17. Defendant Brookline Origination is the Originator under the Loan and Servicing Agreement. On information and belief, Brookline Origination is a limited liability

company organized under the laws of the State of Delaware, with its principal place of business at Two University Plaza, Hackensack, New Jersey 07601. On information and belief, Brookline Origination is wholly owned by Brookline Holdings LLC, which, in turn, is owned by Gregg Wolfer, Jeffrey Wolfer, and Kevin Wolfer (the "Wolfer Family"), all of whom are citizens of the State of New Jersey.

18. Defendant Brookline Servicing is the Servicer under the Loan and Servicing Agreement. On information and belief, Brookline Servicing is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at Two University Plaza, Hackensack, New Jersey 07601. On information and belief, Brookline Servicing is owned by the Wolfer Family.

19. Defendant Kennedy Funding is the Guarantor under the Performance Guaranty. On information and belief, Kennedy Funding is a corporation organized under the laws of the State of New Jersey, with its principal place of business at Two University Plaza, Hackensack, New Jersey 07601. On information and belief, Kennedy Funding is owned by the Wolfer Family.

20. Defendant CSC is the Master Servicer under the Loan and Servicing Agreement. On information and belief, CSC is a corporation organized under the laws of the State of Texas, with its principal place of business at 8616 Freeport Parkway, Irving, Texas 75063.

21. Defendant Hudson Credit Corp. ("Hudson Credit") is one of the Subordinate Lenders under the Loan and Servicing Agreement. On information and belief, Hudson Credit is a corporation organized under the laws of the State of New Jersey, with its principal place of business at One Meadowlands Plaza, Ninth Floor, East Rutherford, New

Jersey 07073. Hudson Credit is named as a Defendant in this action solely due to its subordinate interest in the Collateral sought to be foreclosed upon in Count II (Judicial Foreclosure) below.

22. Defendant Hudson Retail-JFK, Inc. ("Hudson Retail") is one of the Subordinate Lenders under the Loan and Servicing Agreement. On information and belief, Hudson Retail is a corporation organized under the laws of the State of New Jersey, with its principal place of business at One Meadowlands Plaza, Ninth Floor, East Rutherford, New Jersey 07073. Hudson Retail is named as a Defendant in this action solely due to its subordinate interest in the Collateral sought to be foreclosed upon in Count II (Judicial Foreclosure) below.

23. Defendant Hudson News Distributors, LLC ("Hudson News") is one of the Subordinate Lenders under the Loan and Servicing Agreement. On information and belief, Hudson News is a limited liability company organized under the laws of the State of New Jersey, with its principal place of business at One Meadowlands Plaza, Ninth Floor, East Rutherford, New Jersey 07073. On information and belief, Hudson News is owned by Defendant. James Cohen and others who are all citizens of the State of New Jersey. Hudson News is named as a Defendant in this action solely due to its subordinate interest in the Collateral sought to be foreclosed upon in Count II (Judicial Foreclosure) below.

24. Defendant Hudson Media, Inc. ("Hudson Media") is one of the Subordinate Lenders under the Loan and Servicing Agreement. On information and belief, Hudson Media is a corporation organized under the laws of the State of New Jersey, with its principal place of business at One Meadowlands Plaza, Ninth Floor, East Rutherford, New Jersey 07073. Hudson Media is named as a Defendant in this action solely due to its subordinate interest in the Collateral sought to be foreclosed upon in Count II (Judicial Foreclosure) below.

25. Defendant James Cohen is one of the Subordinate Lenders and serves as the Subordinate Lenders' Agent under the Loan and Servicing Agreement. On information and belief, Mr. Cohen is a citizen of the State of New Jersey. Mr. Cohen is named as a Defendant in this action solely due to his subordinate interest in the Collateral sought to be foreclosed upon in Count II (Judicial Foreclosure) below.

The Loan Structure

26. This case involves a type of financing that is commonly referred to as a warehouse loan. In its simplest form, a real estate lender borrows money from a commercial bank which it in turn loans to real estate developers. Here, the structure is more complex. Kennedy Funding is essentially the real estate lender, but instead of borrowing and lending in its own name, it formed, or caused to be formed, special purpose entities for these purposes.

27. At the time of Defendants' breaches, the flow of funds was as follows: Fortis Bank made a senior loan to Brookline Financing. Fortis Bank typically advanced approximately 85% (80% for larger loans) of the amount needed for the underlying Loans and Participations. The Subordinate Lenders typically advanced approximately 9%, and Kennedy Funding typically contributed approximately 6% as residual equity in Brookline Financing.

28. Brookline Financing, in turn, provided the funds to Brookline Origination by purchasing Brookline Origination's interest in the underlying Loans and Participations.

29. Brookline Origination, either on its own or with certain co-lenders, loaned funds to various real estate developers. Most of these loans were intended to serve as bridge loans for 24 or 36 months, and were structured as interest-only mortgage loans with no principal due until maturity. Kennedy Funding served as the agent on all but one of these loans.

30. When Brookline Origination sold each of the underlying Loans or Participations to Brookline Financing, Brookline Origination was required to assign the loan agreements, and any co-lender agreement (each a "Co-Lender Agreement" and, collectively, the "Co-Lender Agreements"), to Brookline Financing and to endorse the mortgage notes over to Brookline Financing. As the Servicer and the Master Servicer, respectively, Brookline Servicing and CSC were required to certify that the Loans were properly assigned prior to any Advances being made.

31. Brookline Financing was required to pledge and assign its interests in the underlying Loans and Participations, then existing or thereafter acquired, to the Trustee, which held the interests in trust to secure the Note and the obligations of Brookline Financing to Fortis Bank and other Secured Parties.

The Transaction Documents

32. The parties' relationship is governed by the Loan and Servicing Agreement. The Loan and Servicing Agreement has been amended six times. It and its amendments, the Note, together with the Intercreditor Agreement, the Sale Agreement, the Lender Fee Letter, and the Performance Guaranty, constitute the Transaction Documents.

33. The Note refers to the Amended and Restated Note, dated September 14, 2007, by Brookline Financing (then known as KF Holdings SPV, LLC) in favor of Fortis Bank.

34. The Intercreditor Agreement refers to the Intercreditor and Subordination Agreement, dated as of September 22, 2008, among Hudson Credit, Hudson Retail, Hudson News, Hudson Media, James Cohen, Brookline Financing, and Fortis Bank.

35. The Sale Agreement refers to (i) the Sale and Contribution Agreement, dated as of January 23, 2007, between Brookline Financing and Brookline Origination, and (ii)

the First Amendment to the Sale and Contribution Agreement, dated as of September 22, 2008 between Brookline Financing and Brookline Origination.

36. The Lender Fee Letter refers to (i) the Lender Fee Letter, dated as of January 23, 2007, and (ii) the First Amendment and Supplement to the Lender Fee Letter, dated as of May 29, 2007.

37. The Performance Guaranty refers to the Amended and Restated Performance Guaranty, dated as of January 15, 2008, that Kennedy Funding executed in favor of Brookline Financing and M&T Bank, as Trustee, for the benefit of Fortis Bank and the other Secured Parties under the Loan and Servicing Agreement.

The Loan and Servicing Agreement

38. On or about January 23, 2007, Fortis Bank, Brookline Financing (then known as KF Holdings SPV, LLC), Brookline Origination (then known as KF Originator, LLC), Brookline Servicing (then known as KF Servicer, LLC), CSC, and M&T Bank, as Trustee, entered into the original Loan and Servicing Agreement. Pursuant to the original Loan and Servicing Agreement, Fortis Bank made a $200 million revolving credit facility available to Brookline Financing, and Brookline Financing made a note in favor of Fortis Bank in the principal amount of $200 million (the "Prior Note").

39. On or about September 14, 2007, in connection with the Third Amendment to the Loan and Servicing Agreement, the revolving credit facility was increased to $300 million. At that time, Brookline Financing (then known as KF Holdings SPV, LLC), made the Note in favor of Fortis Bank in the principal amount of $300 million. The Note replaced and superseded the Prior Note.

40. On or about September 22, 2008, Fortis Bank, Brookline Financing, Brookline Origination, Brookline Servicing, CSC, Hudson Credit, Hudson Retail, Hudson News, Hudson Media, Mr. Cohen, and M&T Bank, as Trustee, entered into the Sixth Amendment to the Loan and Servicing Agreement.

41. Pursuant to the Sixth Amendment, the Subordinate Lenders were made parties to the Loan and Servicing Agreement and agreed to commit to lend up to $36 million to Brookline Financing.

42. As security for Brookline Financing's obligations under the Loan and Servicing Agreement, Brookline Financing granted to the Trustee, for the benefit of the Secured Parties, a lien and continuing security interest in all of the Borrower's right, title and interest in, to and under (but none of the obligations under), whether then existing or thereafter arising or acquired, among other things, all Loans or Participations purchased under the Sale Agreement, all Collections relating to these Loans and Participations and the Required Loan Documents and Loan Files related to any Loan (the "Collateral").

43. Fortis Bank and the Subordinate Lenders' relationship is governed by the Intercreditor Agreement. Under the Intercreditor Agreement, each of the Subordinate Lenders, among other things, agrees that their respective security interests in the Collateral and right to payment is junior to those of Fortis Bank.

44. In connection with the Sixth Amendment, and pursuant to a letter agreement dated September 22, 2008 (the "Sixth Amendment Fee Letter"), Brookline Financing agreed to pay a $150,000 fee (the "Amendment Fee") to Fortis Bank in five equal installments. The last installment of $30,000 was due on September 1, 2009 and was never paid.

Advances Under the Loan and Servicing Agreement

45. The proceeds of Advances made by Fortis Bank under the Loan and Servicing Agreement were to be used by Brookline Financing to purchase Loans or Participations from Brookline Origination that met certain eligibility requirements ("Eligible Loans" and "Participations in Eligible Loans", respectively). To be eligible, among other things, (i) Brookline Origination must have assigned the Loan or Participation to Brookline Financing pursuant to the Sale Agreement; (ii) Brookline Financing must have good and marketable title, free and clear of all liens (other than certain permitted liens); and (iii) Brookline Financing must have granted to the Trustee, for the benefit of Fortis Bank and the other Secured Parties, a valid and perfected security interest (subject to certain permitted liens) in the Loan (together with the Collections and rights to Related Security related thereto) or Participation.

46. To request an Advance under the Loan and Servicing Agreement, CSC, as the Master Servicer, was required, among other things, to deliver a borrowing notice that was duly completed and signed by Brookline Financing, Brookline Servicing, and CSC (the "Borrowing Notice"). In signing a Borrowing Notice, each of Brookline Financing, Brookline Servicing, and CSC certified that, among other things, (i) Brookline Financing would use the proceeds to purchase either Eligible Loans or Participations in Eligible Loans or apply them to the Sub-Facility under the Loan and Servicing Agreement, (ii) the Borrowing Notice attached a true, correct and complete list of all Loans and Participations that were part of the Collateral and each such Loan or Participation reflected thereon is an Eligible Loan, (iii) the conditions precedent for an Advance under Article III of the Loan and Servicing Agreement had been satisfied, (iv) each of Brookline Servicing and Brookline Financing's representations and warranties under the Loan and Servicing Agreement were true and correct, (v) no event had

occurred and is continuing that would constitute a Liquidation Event, Termination Event or Unmatured Termination Event, and (vi) each of Brookline Servicing and Brookline Financing, respectively, was in compliance with each of its covenants set forth in the Transaction Documents.

47. CSC was also required to submit a borrowing base certificate, signed by Brookline Financing, Brookline Servicing, and CSC whereby (i) each certified certain financial calculations with respect to the Loans and Participations, and (ii) Brookline Financing and Brookline Servicing certified that (a) there were no existing Liquidation Events, Termination Events or Unmatured Termination Events and (b) solely with respect to itself, each of the representations and warranties contained in the Loan and Servicing Agreement remained true, correct and complete (the "Borrowing Base Certificate").

48. When Fortis Bank received a properly certified Borrowing Notice and Borrowing Base Certificate and was satisfied that the other conditions to an Advance were met, Fortis Bank released funds to Brookline Financing for the purchase of Loans or Participations from Brookline Origination.

49. The Loan and Servicing Agreement limits the maximum amount that can be outstanding under the credit line (the "Maximum Availability") to the lesser of (i) $300,000,000 or (ii) the Borrowing Base plus the amount of Principal Collections in the Collection Account received in reduction of the Principal Balance minus the Reserve Requirement, as each is calculated in accordance with the terms of the Loan and Servicing Agreement.

50. Under the terms of the Loan and Servicing Agreement, Brookline Origination is required to instruct the borrowers in the underlying Loans to submit all payments

to a lockbox held in the Trustee's name. The Trustee and Brookline Servicing then separate certain Excluded Amounts owing to the Co-Lenders and distribute the remainder of the Collections pursuant to a "waterfall" outlined in the Loan and Servicing Agreement. Pursuant to the waterfall, payment of certain fees and expenses to the Servicer, the Master Servicer, and the Trustee are made in advance of any funds being applied to outstanding interest or the principal balance due to Fortis Bank.

51. Brookline Financing has agreed to pay Fortis Bank interest on each Advance, for each interest period, at a per annum rate, rounded to the nearest 1/100 of 1%, equal to the ratio of the LIBOR Rate over 100% minus the Eurodollar Reserve Percentage. Thus, for example, the interest rate for the June 2009 payment was 0.31%.

52. Under the Lender Fee Letter, Brookline Financing and Brookline Servicing have agreed to pay a Commitment Fee and a Program Fee at the rates specified therein.

Warranties, Representations, Duties, and Covenants Under the Transaction Documents

53. The Transaction Documents require Brookline Financing, Brookline Origination, Brookline Servicing, CSC, and Kennedy Funding to make certain representations and warranties, perform certain duties, and honor certain covenants.

Under the Loan and Servicing Agreement

54. As the Borrower, Brookline Financing has made representations and warranties in Sections 4.1 and 4.2 of the Loan and Servicing Agreement and covenants in Sections 5.1 and 5.2.

55. Among other things, the Loan and Servicing Agreement requires Brookline Financing (i) to use the Advances only to acquire Assets that would be included in the

Collateral, (ii) to acquire the Collateral in accordance with the Sale Agreement, and (iii) to perfect and protect the grant of the security interest in the Collateral to the Trustee.

56. Brookline Financing is also prohibited from extending, amending, or otherwise modifying the terms of any Asset included in the Collateral without the prior written consent of Fortis Bank.

57. As the Servicer, Brookline Servicing is responsible for performing the duties in Section 6.2 of the Loan and Servicing Agreement. The Servicer has made representations and warranties in Section 4.3 of the Loan and Servicing Agreement and covenants in Sections 5.4 and 5.5.

58. Among other things, the Loan and Servicing Agreement requires Brookline Servicing to submit to Fortis Bank a report, three business days prior to the 20th of each month, detailing, among other things, the calculations needed to measure Brookline Financing's compliance with certain financial covenants under the Loan and Servicing Agreement (a "Servicing Report").

59. Brookline Servicing is also required (i) to file financing and continuation statements to preserve and protect fully the Trustee's security interest in the Collateral, (ii) to maintain the perfected security interest of Brookline Financing in the Loans and Participations, and (iii) to maintain the perfected security interest of the Trustee in the Collateral.

60. Brookline Servicing must also maintain all necessary servicing records with respect to the Collateral and provide information or servicing records requested from time to time by Fortis Bank.

61. Prior to any Advance being made, Brookline Servicing is also required to review the Loan File for each Loan or Participation and confirm that each is included in the

Collateral. With respect to each Loan or Participation, the Loan File consists of the underlying promissory note made payable to Brookline Origination, and in the case of each Loan or Participation owned by Brookline Financing, endorsed by Brookline Origination to Brookline Financing and further endorsed by Brookline Financing in blank (the "Required Loan Documents") as well as copies of any other records relating to the Loans and Participations and any related security.

62. As the Master Servicer, CSC is responsible for performing the duties in Section 7.2 of the Loan and Servicing Agreement. The Master Servicer has made representations and warranties in Section 4.4 of the Loan and Servicing Agreement.

63. Among other things, the Master Servicer is required to review the information contained in the Borrowing Notices, Borrowing Base Certificates, and Servicing Reports. CSC is required to sign each of these documents, confirming that it has verified and reconciled, in accordance with the Loan Servicing Agreement, the contents of that document.

64. Additionally, the Master Servicer represents and warrants that all written or electronic information, exhibits, financial statements, documents, books, records or reports furnished by the Master Servicer in connection with the Loan and Servicing Agreement are accurate, true, and correct in all material respects.

65. Article XI of the Loan and Servicing Agreement contains indemnities given by the parties.

66. Under Article XI, Brookline Financing has agreed to indemnify Fortis Bank and the Trustee for actual damages, losses, claims, liabilities, and related costs and expenses, including reasonable attorneys' fees and disbursements resulting from materially false or incorrect representations or warranties at the time they were made by or deemed made by

Brookline Financing, Brookline Origination or Brookline Servicing in any Transaction Document or resulting from any of their respective failures to comply with their duties and obligations under the Transaction Documents.

67. Under Article XI, Brookline Origination has agreed to indemnify Fortis Bank and the Trustee for actual damages, losses, claims, liabilities, and related costs and expenses, including reasonable attorneys' fees and disbursements resulting from materially false, incorrect or misleading representations or warranties made by Brookline Origination in certain documents, resulting from Brookline Origination's failure to comply with its obligations and duties under the Transaction Documents, or resulting from any litigation, proceeding or investigation against Brookline Origination.

68. Under Article XI, Brookline Servicing has agreed to indemnify Fortis Bank and the Trustee for actual damages, losses, claims, liabilities, and related costs and expenses, including reasonable attorneys' fees and disbursements, resulting from any materially false, incorrect or misleading representation or warranty made by Brookline Servicing in any Transaction Document, any Servicing Report, annual statement of compliance or any other information or report delivered by or on behalf of Brookline Servicing, resulting from Brookline Servicing's failure to comply with its duties or obligations under the Transaction Documents, or resulting from any litigation, proceeding or investigation against Brookline Servicing.

69. Under the Loan and Servicing Agreement, Brookline Financing has agreed to pay on demand all reasonable costs and expenses, if any (including reasonable counsel fees and expenses), incurred by Fortis Bank or the Trustee in connection with their enforcement of the Loan and Servicing Agreement or any other document to be delivered in connection with any Transaction Document.

Under the Sale Agreement

70. Pursuant to the Sale Agreement, Brookline Origination has agreed to sell, transfer, assign, set over and otherwise convey to Brookline Financing all right, title and interest in the Loans and Participations listed on each Asset List and all Related Security, including the underlying loan documents related to such Loans or Participations (the "Buyer's Assets").

71. Further, under the Sale Agreement, Brookline Origination has covenanted to sell or transfer the Buyer's Assets in accordance with the Sale Agreement and to take all action necessary to perfect, protect, and more fully evidence Brookline Financing's or its assignee's ownership of, or security interests in, the Buyer's Assets free and clear (with limited exceptions) of any lien.

72. Additionally, Brookline Origination has warranted and represented, for the benefit of Fortis Bank and the other Secured Parties, that each representation and warranty contained in the Sale Agreement, any certificate or other document furnished by Brookline Origination in connection with the Sale Agreement, and any representation and warranty of Brookline Origination contained in the other Transaction Documents to which it is a party, is true and correct in all material respects on the date that it was made. Among other things, Brookline Origination has represented and warranted as of the date of each purchase of a Loan or Participation that:

> a. the Sale Agreement constitutes a valid transfer to Brookline Financing of all right, title and interest of Brookline Origination in, to, and under all of the Buyer's Assets, free and clear of any lien (with limited exceptions) of any Person claiming through or under Brookline Origination or its affiliates;
>
> b. Brookline Origination owns and has good and marketable title to the Buyer's Assets purchased by Brookline Financing hereunder on such Purchase Date, free and clear of any lien, claim or encumbrance (with limited exceptions) of any person;

c. Brookline Origination has caused the filing of all appropriate financing statements to perfect the ownership interest of Brookline Financing in those Buyer's Assets and the security interest of M&T Bank as Trustee, as assignee for the benefit of Fortis Bank and the other Secured Parties, granted under the Loan and Servicing Agreement;

d. Brookline Origination has transferred to the law firm of Cole, Schotz, Meisel, Forman, & Leonard, P.A. ("Cole Schotz"), as the Closing Agent, the Required Loan Documents relating to each Loan or Participation transferred to Brookline Financing; and

e. None of the promissory notes that constitute or evidence the Loans included in the Buyer's Assets has any marks or notations indicating that they have been pledged, assigned or otherwise conveyed to any person other than Brookline Origination or Brookline Financing.

73. Further, under the Sale Agreement, Brookline Origination has agreed not to sell, pledge, assign or transfer to any other person, or grant, create, incur, assume or suffer to exist any lien on any Loan or Participation. It has also agreed to promptly notify Brookline Financing and Fortis Bank of the existence of any such lien.

74. Under the Sale Agreement, Brookline Origination has agreed to pay on demand all reasonable costs and expenses, if any (including reasonable counsel fees and expenses), incurred by Brookline Financing or its assignees in connection with its enforcement of the Sale Agreement and the other documents to be delivered under, or in connection with, the Sale Agreement.

75. Pursuant to the Loan and Servicing Agreement, Brookline Financing has assigned to the Trustee, for the ratable benefit of Fortis Bank and the other Secured Parties all of its right, title and interest in and to, but none of its obligations to, the Sale Agreement, and the UCC financing statements filed under or in connection therewith.

Under the Performance Guaranty

76. Under the Performance Guaranty, Kennedy Funding has guaranteed the due and punctual performance of the respective covenants, agreements, and obligations of Brookline Origination and Brookline Servicing in each Transaction Document to which it was a party.

77. With respect to payment obligations, the Performance Guaranty is limited to the obligations of Brookline Origination under the Loan and Servicing Agreement to purchase any loan that was not an Eligible Loan under the Loan and Servicing Agreement (a "Warranty Loan") and the indemnification obligations of Brookline Origination and Brookline Servicing under the Loan and Servicing Agreement.

78. Under the Performance Guaranty, the Trustee may proceed against Kennedy Funding before first seeking payment from Brookline Origination or Brookline Servicing.

79. Kennedy Funding has also agreed under the Performance Guaranty to pay costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by the Trustee in connection with the protection, defense, or enforcement of its rights under the Guaranty.

80. Kennedy Funding confirmed its indemnification and cost payment obligations under the Performance Guaranty when it executed the Workout Letter (defined below) in October 2009.

The Termination Events

81. Under the Loan and Servicing Agreement, a Liquidation Event occurs, among other things, if (i) on any day the amounts outstanding under the loan ("Amounts

Outstanding") exceed the Maximum Availability; (ii) as of the 9th day of the month (the "Determination Date"), the Pool Yield is less than Minimum Pool Yield; or (iii) as of the Determination Date, the aggregate Principal Balance of all Loans or Participations that are delinquent for six months or more and any collateral securing the Loan remains unliquidated (the "Defaulted Loans") exceeds 35% of the Principal Collateral Value.

82. If any Liquidation Event is not cured within the applicable time period set forth in the Loan and Servicing Agreement (30 or 180 days), it becomes a Termination Event. Upon the occurrence of a Termination Event described in Section 10.1 of the Loan and Servicing Agreement, no further Advances or Subordinate Advances may be made and, if the Termination Event relates to the nonpayment of amounts due, the interest rate increases to the Base Rate plus 2.0% (the "Default Rate").

83. Section 10.2 of the Loan and Servicing Agreement grants Fortis Bank certain other remedies upon the occurrence of a Termination Event. Among other things, Fortis Bank may (i) declare that the unpaid principal balance of all Advances, together with accrued interest thereon, is due and payable, and (ii) direct the Trustee to (a) require Brookline Financing and Brookline Origination to assemble all or part of the Collateral and (b) sell the Collateral as set forth in Section 10.2(d).

84. On or about June 18, 2009, Brookline Servicing submitted a Servicing Report to Fortis Bank indicating that (i) the Outstanding Advances under the Loan and Servicing Agreement were $285,035,964.83, (ii) the Pool Yield was 0.19%, and (iii) 41.57% of the Collateral were Defaulted Loans.

85. The Servicing Report showed that the Maximum Availability, as calculated in accordance with the Loan and Servicing Agreement, was $283,967,912.95. This

meant that the Outstanding Advances exceeded the Maximum Availability by approximately $1.1 million. This was a Liquidation Event and an Unmatured Termination Event under the Loan and Servicing Agreement (the "Maximum Availability Event").

86. The Loan and Servicing Agreement requires that the aggregate principal balance of all Defaulted Loans be less than or equal to 35% of the Principal Balances of all Eligible Loans and that the Pool Yield be greater than or equal to 1%. Brookline Financing's failure to meet either of these requirements constituted separate Liquidation Events and an Unmatured Termination Events under the Loan and Servicing Agreement (the "Covenant Events").

87. By letter dated June 22, 2009, Fortis Bank notified Brookline Financing that these Liquidation Events and Unmatured Termination Events had occurred and were continuing. Under the Loan and Servicing Agreement, Brookline Financing had 30 days to cure the Maximum Availability Event and 180 days to cure the two Covenant Events. It did not cure any of these events.

88. By letter dated July 28, 2009, Fortis Bank notified Brookline Financing, Brookline Servicing, Brookline Origination, and Kennedy Funding that a Termination Event had occurred on July 22, 2009 based on the continuation of the Maximum Availability Event for more than 30 consecutive days.

89. On September 1, 2009, Brookline Financing failed to pay the September 1, 2009 installment of the Amendment Fee that was due under the Sixth Amendment Fee Letter. This also constituted a Termination Event under the Loan and Servicing Agreement.

90. By letter to Brookline Financing dated September 3, 2009, Fortis Bank declared the Termination Date to have occurred under the Loan and Servicing Agreement, that

the Amortization Period had commenced, and that all amounts outstanding were immediately due and payable.

91. By letter dated September 9, 2009, Fortis Bank notified Brookline Financing, Brookline Servicing, Brookline Origination, and Kennedy Funding that another Termination Event had occurred pursuant to the Loan and Servicing Agreement because Brookline Financing had failed to pay the September 1, 2009 installment of the Amendment Fee and that interest would begin to accrue at the Default Rate. Interest continues to accrue at the Default Rate, which as of December 2009 was 5.25%.

92. By letter dated September 10, 2009, the Trustee, at the direction of Fortis Bank, directed Brookline Financing and Brookline Origination to assemble and make available all of the Collateral. The Collateral was not made available or delivered as directed, in further breach of the Loan and Servicing Agreement.

93. In or about October 2009, Brookline Financing, Brookline Origination, Brookline Servicing, and Kennedy Funding (collectively, the "Brookline Defendants") requested that Fortis Bank enter into negotiations for a possible resolution of the ongoing Liquidation Events, Unmatured Termination Events, and Termination Events (the "Defaults").

94. By letter dated October 28, 2009 (the "Workout Letter"), Fortis Bank informed the Brookline Defendants that it would enter discussions, contingent upon the Brookline Defendants' confirmation and agreement to several conditions.

95. On or about October 28, 2009, each of the Brookline Defendants executed the Workout Letter, agreeing and acknowledging, among other things, that (i) certain Defaults had occurred under the Loan and Servicing Agreement and the other Transaction Documents, (ii) each of the Brookline Defendants would be liable for any of Fortis Bank's legal fees incurred in

connection with its enforcement of the Loan and Servicing Agreement and the other Transaction Documents, (iii) as of October 28, 2009, the principal balance of the amounts owed to Fortis Bank by the Brookline Defendants was $283,217,056.49, and (iv) the Workout Letter and the Brookline Defendant's acknowledgements therein may be admitted into evidence in any proceeding including, without limitation, for the purpose of enforcing the agreements contained in the Workout Letter.

96. By letter dated December 18, 2009, Fortis Bank notified Brookline Financing, Brookline Servicing, Brookline Origination, and Kennedy Funding that a Termination Event occurred on December 18, 2009, based on the continuation of the Covenant Events for more than 180 consecutive days.

97. To date, Brookline Financing has failed to pay the amount outstanding under the Loan and Servicing Agreement and the Note, which as of December 21, 2009 consisted of $282,055,480.36 in unpaid principal plus $1,141,339.16 in accrued interest. Interest on the unpaid principal amount continues to accrue.

98. To date, Brookline Financing and Brookline Origination have failed to deliver the Collateral.

The Improper Assignments of the Specified Loans

99. Pursuant to the Sale Agreement, when Fortis Bank made an Advance with respect to a particular Loan, Brookline Origination was required to assign its interest in that Loan and any proceeds from it to Brookline Financing. Brookline Servicing and CSC are required to certify and ensure that the assignment occurs prior to Fortis Bank making any Advance.

100. On information and belief, there are at least five Loans and Participations where Brookline Origination failed to properly assign its interest in the Loans and Participations

to Brookline Financing, and Brookline Servicing and CSC failed to ensure that these assignments occurred prior to Fortis Bank making an Advance (each individually, a "Specified Loan" and together, the "Specified Loans"). According to Fortis Bank, these are to (i) Mid-Atlantic Resort Development, LLC, (ii) Saguaro Ranch Development Corp., (iii) White Sands Estates, LLC, (iv) Extra Land Co., and (v) Motels of America-Cody, LLC. Fortis Bank's review of the notes underlying each of the Specified Loans, the loan agreements related to such notes, and the Co-Lender Agreements related to the Specified Loans indicates that those documents either show no lender of record or show a lender of record that is not Brookline Financing.

101. Each time thereafter that Fortis Bank made an Advance to Brookline Financing, CSC, as Master Servicer, and Brookline Servicing, as Servicer, submitted a Borrowing Notice and Borrowing Base Certificate to Fortis Bank in which a Specified Loan was treated as part of the Collateral. To the extent that the Specified Loans did not become part of the Collateral, this was incorrect and resulted in CSC and Brookline Servicing breaching their respective obligations, representations and warranties under the Loan and Servicing Agreement.

102. To the extent that a security interest in one of the Specified Loans was not properly assigned to Brookline Financing and did not therefore become a part of the Collateral, Brookline Servicing breached in each such instance its obligation to file financing and continuation statements to preserve and protect fully the Trustee's security interest in, to, and under the Collateral.

103. To the extent a Specified Loan did not become part of the Collateral, Brookline Servicing breached in each such instance its duty to maintain the perfected security interest of Brookline Financing's interest in the Loans and Participations and the perfected security interest of the Trustee in the Collateral.

104. To the extent Brookline Servicing directed Fortis Bank to make an Advance for the purchase of a Specified Loan and such Specified Loan was not part of the Collateral, Brookline Servicing breached in each such instance its duty to review the Loan File and confirm that each Loan or Participation is included in the Collateral.

105. To the extent CSC signed a Borrowing Notice or Borrowing Base Certificate that referenced a Specified Loan that was not part of the Collateral, CSC breached in each such instance its duty under the Loan and Servicing Agreement to verify the accuracy of the contents of those documents in accordance with the Loan and Servicing Agreement.

106. To the extent it did not sell, transfer, assign, set over, or otherwise convey to Brookline Financing the Specified Loans, Brookline Origination breached the Sale Agreement.

107. To the extent Brookline Origination submitted a certificate or other document required under the Sale Agreement that referenced a Specified Loan that was not part of the Collateral, it breached in each such instance the following representations and warranties under Section 4.2 of the Sale Agreement:

a. that the Sale Agreement constitutes a valid transfer to Brookline Financing of all right, title and interest of Brookline Origination in, to, and under all of the Buyer's Assets, free and clear of any lien (with limited exceptions) of any Person claiming through or under Brookline Origination or its Affiliates;

b. that Brookline Origination owns and has good and marketable title to the Buyer's Assets purchased by Brookline Financing hereunder on such Purchase Date, free and clear of any lien, claim or encumbrance (with limited exceptions) of any person;

c. that Brookline Origination has caused the filing of all appropriate financing statements to perfect the ownership interest of Brookline Financing in those Buyer's Assets and the security interest of M&T Bank as Trustee, as assignee for the benefit of Fortis Bank and the other Secured Parties, granted under the Loan and Servicing Agreement;

d. that Brookline Origination has transferred to Cole Schotz the Required Loan Documents relating to each Loan or Participation transferred to Brookline Financing; and

e. that none of the promissory notes that constitute or evidence the Loans included in the Buyer's Assets has any marks or notations indicating that they have been pledged, assigned or otherwise conveyed to any person other than Brookline Origination or Brookline Financing.

108. To the extent it did not properly assign the Specified Loans, Brookline Origination breached in each such instance its covenant to sell or transfer the Buyer's Assets pursuant to and in accordance with the terms of the Sale Agreement and take all action necessary to perfect and protect fully Brookline Financing or its assignee's ownership of or security interests in the Buyer's Assets free and clear of any lien.

109. To the extent it did not properly assign the Specified Loans to Brookline Financing and failed to notify Fortis Bank of this defect, Brookline Origination breached in each such instance its covenant not to sell, pledge, assign or transfer to any other person, or grant, create, incur, assume or suffer to exist any lien on any Loan and its covenant promptly to notify Brookline Financing and Fortis Bank of the existence of any such lien against such Loans or Participations.

110. Under the Performance Guaranty, Kennedy Funding is liable for all losses incurred by Fortis Bank and the Trustee as a result of any of the breaches by Brookline Origination or Brookline Servicing under the Transaction Documents.

Amendment of the Collateral Assets Without Fortis Bank's Consent

111. Section 5.2(k) of the Loan and Servicing Agreement prohibits Brookline Financing from extending, amending, or otherwise modifying the terms of any Asset included in the Collateral without the prior written consent of Fortis Bank.

112. Pursuant to the Co-Lender Agreement for each Loan included in the Collateral, any amendment made by Kennedy Funding, as Agent, requires (with limited exceptions) the approval of more than 50% of the Co-Lenders as determined by each Co-Lender's participation in the Loan (the "Lender's Percentage").

The Harbor Development LP Loan

113. A Loan to Harbor Development LP ("Harbor Development") is included in the Collateral.

114. Brookline Financing's Lender's Percentage in the Harbor Development Loan is approximately 41%.

115. On information and belief, in or about January 2008, Brookline Financing and certain other Co-Lenders consented to a modification of the Harbor Development Loan. Brookline Financing did not obtain Fortis Bank's prior written consent. This constituted an amendment or modification of an Asset contained in the Collateral in breach of the Loan and Servicing Agreement.

116. On or about January 29, 2008, Kennedy Funding, as Agent, executed a modification agreement on behalf of Brookline Financing and the other Co-Lenders, which modified the terms of the Harbor Development Loan (the "First Modification Agreement").

117. Pursuant to the First Modification Agreement, Kennedy Funding is or was to receive a nonrefundable $306,000 restructuring fee.

118. On information and belief, in or about August 2008, Brookline Financing and certain other Co-Lenders consented to a second modification of the Harbor Development Loan. Again, Brookline Financing failed to obtain Fortis Bank's prior written consent. This also

constituted an amendment or modification of an Asset contained in the Collateral in breach of the Loan and Servicing Agreement.

119. On or about August 10, 2008, Kennedy Funding, as Agent, executed a second modification agreement on behalf of Brookline Financing and the other Co-Lenders, which modified the terms of the Harbor Development Loan (the "Second Modification Agreement").

120. Pursuant to the Second Modification Agreement, Kennedy Funding is or was to receive a $500,000 restructuring fee.

121. In or about July 2009, a representative of either Brookline Financing or Kennedy Funding sought Fortis Bank's consent to a third modification of the Harbor Development Loan.

122. Fortis Bank conditioned its consent to any modification on certain conditions including, among other things, written certification that any funds received by Kennedy Funding (including the proposed $5 million amendment fee) would be directed to the Collection Account and would not constitute Excluded Amounts.

123. Fortis Bank never received the written certification and the other conditions necessary for its consent, and, therefore, Fortis Bank never gave its consent.

124. On or about July 15, 2009, Brookline Financing consented to a third modification of the Harbor Development Loan without obtaining Fortis Bank's prior written consent. This constituted an amendment or modification of an Asset contained in the Collateral in breach of the Loan and Servicing Agreement.

125. On or about July 15, 2009, Kennedy Funding, as Agent, executed a third modification agreement on behalf of Brookline Financing and the other Co-Lenders, which modified the terms of the Harbor Development Loan (the "Third Modification Agreement").

126. Fortis Bank requested confirmation that the required number of Co-Lenders had consented to the Third Modification Agreement.

127. Brookline Financing and Kennedy Funding maintained that the Third Modification Agreement was approved by the required percentage of Co-Lenders. However, neither entity produced signatures from the required percentage of Co-Lenders.

128. Not counting Brookline Financing's improper consent, the required percentage of Co-Lenders did not consent to the Harbor Development Amendment.

129. Pursuant to the Third Modification Agreement, Kennedy Funding is or was to receive a $5 million amendment fee.

The Kirkbride Realty Corporation Loan

130. A Loan to Kirkbride Realty Corporation ("Kirkbride Realty") is included in the Collateral.

131. Brookline Financing contributed 100% of the funds to the Kirkbride Realty Loan and is the sole (100%) participant in the Loan. Its consent (with limited exceptions) is therefore required for any modification of the Loan.

132. On information and belief, in or about October 2008, Brookline Financing consented to a modification of the Kirkbride Realty Loan. Brookline Financing did not obtain Fortis Bank's prior written consent. This constituted an amendment or modification of an Asset contained in the Collateral in breach of the Loan and Servicing Agreement.

133. On or about October 30, 2008, Kennedy Funding, as Agent, executed a modification agreement on behalf of Brookline Financing, which modified the terms of the Kirkbride Realty Loan.

134. Pursuant to this modification agreement, Kennedy Funding is or was to receive a waiver fee equal to 3% of the principal amount of the Loan, which is $15,100,000.

The Pacific Holt Corporation Loan

135. A Loan to Pacific Holt Corporation ("Pacific Holt") is included in the Collateral.

136. Brookline Financing contributed 100% of the funds to the Pacific Holt Loan and is the sole (100%) participant in the Loan. Its consent (with limited exceptions) is therefore required for any modification of the Loan.

137. On information and belief, in or about February 2009, Brookline Financing consented to a modification of the Pacific Holt Loan. Brookline Financing did not obtain Fortis Bank's prior written consent. This constituted an amendment or modification of an Asset contained in the Collateral in breach of the Loan and Servicing Agreement.

138. On or about March 1, 2009, Kennedy Funding, as Agent, executed a modification agreement on behalf of Brookline Financing, which modified the terms of the Pacific Holt Loan.

139. Pursuant to this modification agreement, Kennedy Funding is or was to receive a $108,000 modification fee.

The A.D.&D. Farms, L.L.C. Loan

140. A Loan to A.D.&D. Farms, L.L.C. ("AD&D Farms") is included in the Collateral.

141. Brookline Financing contributed 100% of the funds to the AD&D Farms Loan and is the sole (100%) participant in the Loan. Its consent (with limited exceptions) is therefore required for any modification of the Loan.

142. On information and belief, in or about March 2009, Brookline Financing consented to a modification of the AD&D Farms Loan. Brookline Financing did not obtain Fortis Bank's prior written consent. This constituted an amendment or modification of an Asset contained in the Collateral in breach of the Loan and Servicing Agreement.

143. On or about April 1, 2009, Kennedy Funding, as Agent, executed a modification agreement on behalf of Brookline Financing, which modified the terms of the AD&D Farms Loan.

144. Under the terms of this modification agreement, Kennedy Funding is or was to receive a $117,000 modification fee.

Kennedy Funding's Tortious Interference with the Loan and Servicing Agreement

145. On information and belief, Kennedy Funding is closely affiliated with Brookline Financing, is under common ownership and management, and is aware of the existence of, and the terms contained in, the Loan and Servicing Agreement, including Section 5.2(k), which prohibits Brookline Financing from extending, amending, or otherwise modifying the terms of any Asset included in the Collateral without the prior written consent of Fortis Bank.

146. Each time that Brookline Financing consented to an amendment or modification of a Loan without Fortis Bank's written consent, Brookline Financing amended or modified an Asset contained in the Collateral in breach of the Loan and Servicing Agreement.

147. On information and belief, Kennedy Funding procured each of Brookline Financing's breaches of the Loan and Servicing Agreement by working with and directing Brookline Financing to consent to these modifications knowing that Fortis Bank's written consent was required and had not been obtained.

148. Brookline Financing and Kennedy Funding have sought Fortis Bank's approval of amendments and modifications of other Assets included in the Collateral. Fortis Bank denied many of these requests or made its consent to any amendment or modification contingent on certain conditions.

149. On information and belief, based on the prior conduct of Brookline Financing including, but not limited to, the events described above, Brookline Financing has consented to an amendment or modification of at least one other Asset included in the Collateral without first obtaining Fortis Bank's consent.

150. On information and belief, based on the prior conduct of Kennedy Funding including, but not limited to, the events described above, Kennedy Funding has procured Brookline Financing's breaches of the Loan and Servicing Agreement by working with and directing Brookline Financing to consent to at least one additional amendment or modification of an Asset contained in the Collateral knowing that Fortis Bank's written consent was required and had not been obtained.

Count I

(On Behalf of Fortis Bank Against Defendant Brookline Financing for Amounts Due under the Note and the Loan and Servicing Agreement)

151. Fortis Bank repeats and realleges paragraphs 1 through 150 as if set forth fully herein.

152. Brookline Financing has failed to repay the amount due and owing under the Note and the Loan and Servicing Agreement. As of December 21, 2009, this amount consisted of $282,055,480.36 in unpaid principal and $1,141,339.16 in accrued interest.

153. By reason of the foregoing, Fortis Bank is entitled to judgment against Brookline Financing in an amount to be determined at trial, but not less than $282,055,480.36, plus interest thereon, which has accrued and continues to accrue at the rate set forth in the Loan and Servicing Agreement.

Count II

(On Behalf of Plaintiffs Against all Defendants for Judicial Foreclosure on and Sale of the Collateral)

154. Plaintiffs repeat and reallege paragraphs 1 through 150 as if set forth fully herein.

155. Under the Loan and Servicing Agreement, upon the occurrence of a Termination Event, the Trustee has all the remedies provided under the Transaction Documents, the Uniform Commercial Code and other applicable law and may sell the Collateral or any part thereof in one or more parcels at a public or private sale, at any of the Trustee's or Fortis Bank's offices or elsewhere, for cash, on credit, or for future delivery, and on such terms as the Trustee, as directed by Fortis Bank, may deem commercially reasonable.

156. On or about July 22, 2009, a Termination Event occurred under the Loan and Servicing Agreement.

157. On or about September 10, 2009, the Trustee, at the request of Fortis Bank, directed Brookline Financing and Brookline Origination to assemble and deliver the Collateral. Brookline Financing and Brookline Origination have failed to deliver the Collateral as directed.

158. By reason of the foregoing, Plaintiffs are entitled to an order: (i) directing Brookline Financing and Brookline Origination to assemble and deliver the Collateral to Fortis Bank; (ii) directing Brookline Origination to effectuate the proper transfer of any Specified Loans to Brookline Financing or in the alternative correcting any errors in the Specified Loans, so that they can be made part of the Collateral and delivered to Fortis Bank; (iii) authorizing Fortis Bank to market and sell the Collateral in a commercially reasonable manner at auction; (iv) authorizing Fortis Bank to credit bid for the Collateral; (v) removing Brookline Servicing from its role as Servicer and CSC from its role as Master Servicer; (vi) extinguishing any subordinate rights and junior interests (including contract claims) under the Transaction Documents; and (vii) directing foreclosure on, marketing, and sale of the Collateral in accordance with the New York Uniform Commercial Code.

Count III

(On Behalf of Fortis Bank and, in Part, the Trustee, Against Defendants Brookline Financing, Brookline Servicing and CSC for Breach of the Loan and Servicing Agreement)

159. Plaintiffs repeat and reallege paragraphs 1 through 150 and 154 through 158 as if set forth fully herein.

160. Defendants Brookline Financing, Brookline Servicing, and CSC breached the Loan and Servicing Agreement in at least the following ways.

a. Brookline Financing breached the Loan and Servicing Agreement by exceeding its Maximum Availability, by failing to maintain a minimum Pool

Yield of 1.0% and by exceeding the requisite percentage of Defaulted Loans in the balance of the Collateral;

b. Brookline Financing failed to make the final installment of the Amendment Fee due under the Sixth Amendment Fee Letter;

c. Brookline Financing, Brookline Servicing, and CSC certified that Advances would be used to purchase Eligible Loans or Participations in Eligible Loans. To the extent that Advances were used to purchase Specified Loans, this certification was untrue, incorrect and incomplete;

d. Brookline Financing, Brookline Servicing, and CSC certified that the Asset List listed all Assets that are part of the Collateral and that each such Loan or Participation is an Eligible Loan. To the extent that the Specified Loans are not part of the Collateral or Eligible Loans, this certification was untrue, incorrect and incomplete;

e. Brookline Financing, Brookline Servicing, and CSC certified that all conditions precedent for an Advance were satisfied and that all of the representations and warranties of Brookline Financing and Brookline Servicing were true and correct. To the extent that Loans were not properly assigned to Brookline Financing, these certifications, representations and warranties were untrue, incorrect and incomplete;

f. Brookline Financing, Brookline Servicing, and CSC certified that Brookline Servicing and Brookline Financing were in compliance with each of their covenants set forth in the Transaction Documents. To the extent that Specified Loans did not become part of the Collateral, this certification was untrue, incorrect, and incomplete;

g. Brookline Financing consented to three amendments of the Harbor Development Loan, and, on information and belief, the AD&D, Pacific Holt, and Kirkbride Realty Loans without first obtaining Fortis Bank's written consent, in breach of the Loan and Servicing Agreement;

h. On information and belief, Brookline Financing has consented to amendments of loan documents related to other Assets that comprise Fortis Bank's Collateral without receiving Fortis Bank's consent, in breach of the Loan and Servicing Agreement;

i. To the extent that the Specified Loans did not become part of the Collateral, Brookline Servicing failed to file financing and continuation statements to preserve and fully protect the Trustee's interest in the Collateral;

j. To the extent that the Specified Loans did not become part of the Collateral, Brookline Servicing failed to maintain a perfected security interest of the Trustee in the Collateral;

k. Brookline Servicing certified that the Advances would be used to purchase Eligible Loans or Participations in Eligible Loans. To the extent that a Specified Loan did not become part of the Collateral, Brookline Servicing breached its duty to review the Loan File to ensure that an Advance was not made to purchase a Specified Loan;

l. CSC certified that it verified and reconciled the information contained in each individual Borrowing Notice and Borrowing Base Certificate. To the extent that the Specified Loans were not included in the Collateral CSC breached its duty to verify the information in these documents; and

m. Brookline Financing and Brookline Origination never assembled and delivered the Collateral to Fortis Bank as directed by the Trustee.

161. By reason of the foregoing, Fortis Bank (and with respect to (i), (j) and (m) the Trustee) is entitled to judgment against Defendants in an amount to be determined at trial.

Count IV

(On Behalf of Plaintiffs Against Defendant Brookline Origination for Breach of the Sale Agreement)

162. Plaintiffs repeat and reallege paragraphs 1 through 150 and 154 through 161 as if set forth fully herein.

163. Brookline Financing assigned its rights under the Sale Agreement to the Trustee, for the ratable benefit of Fortis Bank and the other Secured Parties.

164. Brookline Origination breached the Sale Agreement in at least the following ways:

a. To the extent that the Specified Loans did not become part of the Collateral and were listed on the Asset List, Brookline Origination breached its requirement to sell, transfer, assign, set over and otherwise convey to Brookline Financing all right, title and interest in the Buyer's Assets and protect fully Brookline Financing or its assignee's ownership of or security interests in the Buyer's Assets free and clear of any lien;

b. To the extent that the Specified Loans did not become part of the Collateral and Brookline Origination did not inform Fortis Bank of this fact, Brookline Origination breached its covenant to not sell, pledge, assign or transfer to any other person, or grant, create, incur, assume or suffer to exist any lien on any Loan or Participation and to promptly notify Brookline Financing and Fortis Bank of the existence of any such lien;

c. To the extent that the Specified Loans did not become part of the Collateral, each representation and warranty contained in the Sale Agreement, any certificate or other document furnished by Brookline Origination pursuant to or in connection with the Sale Agreement and the representations and warranties of Brookline Origination contained in the other Transaction Documents to which it is a party were not true and correct in all material respects on the date that each was made. Among other things, Brookline Origination represented and warranted that:

i. The Sale Agreement constitutes a valid transfer to Brookline Financing of all right, title and interest of Brookline Origination in, to, and under all of the Buyer's Assets, free and clear of any lien (with limited exceptions) of any Person claiming through or under Brookline Origination or its Affiliates;

ii. Brookline Origination owns and has good and marketable title to the Buyer's Assets purchased by Brookline Financing hereunder on such Purchase Date, free and clear of any lien, claim or encumbrance (with limited exceptions) of any person;

iii. Brookline Origination has caused the filing of all appropriate financing statements to perfect the ownership interest of Brookline Financing in those Buyer's Assets and the security interest of M&T Bank as Trustee, as assignee, for the benefit of Fortis Bank and the other Secured Parties, granted under the Loan and Servicing Agreement;

iv. Brookline Origination has transferred to Cole Schotz the Required Loan Documents relating to each Loan or Participation transferred to Brookline Financing; and

v. None of the promissory notes that constitute or evidence the Loans included in the Buyer's Assets has any marks or notations indicating that they have been pledged, assigned or otherwise conveyed to any person other than Brookline Origination or Brookline Financing.

165. By reason of the foregoing, Plaintiffs are entitled to judgment against Brookline Origination in an amount to be determined at trial.

Count V

(On Behalf of Plaintiffs Against Defendant Kennedy Funding for Indemnification Under the Performance Guaranty)

166. Plaintiffs repeat and reallege paragraphs 1 through 150 and 154 through 165 as if set forth fully herein.

167. Under the Performance Guaranty, Kennedy Funding guaranteed due and punctual performance of the respective covenants, agreements, and obligations of Brookline Origination and Brookline Servicing in each Transaction Document to which either of them was a party for the benefit of the Trustee and for the benefit of Fortis Bank and the other Secured Parties. With respect to payment obligations, this included the indemnification obligations of Brookline Origination and Brookline Servicing under the Loan and Servicing Agreement.

168. Fortis Bank is named as a third-party beneficiary under the Performance Guaranty.

169. Under the Loan and Servicing Agreement, Brookline Origination agreed to indemnify Fortis Bank and the Trustee for actual damages, losses, claims, liabilities, and related costs and expenses, including reasonable attorneys' fees and disbursements resulting from materially false, incorrect or misleading representations or warranties made by Brookline Origination in certain documents, resulting from Brookline Origination's failure to comply with its obligations and duties under the Transaction Documents, or resulting from any litigation, proceeding or investigation against Brookline Origination.

170. Under the Loan and Servicing Agreement, Brookline Servicing agreed to indemnify Fortis Bank and the Trustee for actual damages, losses, claims, liabilities, and related costs and expenses, including reasonable attorneys' fees and disbursements, resulting from any materially false, incorrect or misleading representation or warranty made by Brookline Servicing

in any Transaction Document, any Servicing Report, annual statement of compliance or any other information or report delivered by or on behalf of Brookline Servicing, resulting from Brookline Servicing's failure to comply with its duties or obligations under the Transaction Documents, or resulting from any litigation, proceeding or investigation against Brookline Servicing.

171. Brookline Servicing and Brookline Origination have breached their respective representations, warranties, duties and covenants under the Transaction Documents.

172. By reason of the foregoing Plaintiffs are entitled to judgment against Kennedy Funding in an amount to be determined at trial.

Count VI

(On Behalf of Fortis Bank Against Defendant Kennedy Funding for Tortious Interference with the Loan and Servicing Agreement)

173. Fortis Bank repeats and realleges paragraphs 1 through 172 as if set forth fully herein.

174. Fortis Bank and Brookline Financing are parties to the Loan and Servicing Agreement.

175. Kennedy Funding is and was, at all relevant times, aware of the existence of and the terms contained in the Loan and Servicing Agreement.

176. Brookline Financing consented to three modification agreements that amended the terms of the Harbor Development Loans without first obtaining Fortis Bank's written consent.

177. On information and belief, Brookline Financing consented to modification agreements that amended the terms of other Loans including, but not limited to, the AD&D, Pacific Holt, and Kirkbride Realty Loans, without first obtaining Fortis Bank's written consent.

Each time that Brookline Financing consented to an amendment without Fortis Bank's consent, it constituted an amendment or modification of an Asset contained in the Collateral in breach of the Loan and Servicing Agreement.

178. Kennedy Funding, as Agent, executed modification agreements on behalf of Brookline Financing and other Co-Lenders, which amended the terms of at least four Loans included in the Collateral.

179. Kennedy Funding procured Brookline Financing's breaches of the Loan and Servicing Agreement by working with and directing Brookline Financing to consent to these modification agreements knowing that Fortis Bank's written consent was required and had not been obtained.

180. Under each of the modification agreements, Kennedy Funding is to receive a modification or restructuring fee.

181. By reason of the foregoing, Fortis Bank is entitled to judgment against Kennedy Funding in an amount to be determined at trial.

Count VII

(On Behalf of Plaintiffs Against Defendants Brookline Financing, Brookline Origination, Brookline Servicing and Kennedy Funding for Costs and Expenses)

182. Plaintiffs repeat and reallege paragraphs 1 through 150 and 154 through 172 as if set forth fully herein.

183. Under the Loan and Servicing Agreement, Brookline Financing agreed to pay on demand all reasonable costs and expenses, if any (including reasonable counsel fees and expenses), incurred by Plaintiffs in connection with their enforcement of the Loan and Servicing Agreement or any other Transaction Document.

184. Under the Sale Agreement, Brookline Origination agreed to pay on demand all reasonable costs and expenses, if any (including reasonable counsel fees and expenses), incurred by Brookline Financing or its assignees in connection with its enforcement of the Sale Agreement and the other documents to be delivered under or in connection with the Sale Agreement. Brookline Financing assigned its rights under the Sale Agreement to the Trustee, for the ratable benefit of Fortis Bank and the other Secured Parties.

185. Under the Loan and Servicing Agreement, Brookline Origination and Brookline Servicing, each respectively, agreed to indemnify Fortis Bank and the Trustee for actual damages, losses, claims, liabilities, and related costs and expenses, including reasonable attorneys' fees and disbursements resulting from any litigation, proceeding, or investigation against Brookline Origination or Brookline Servicing.

186. Under the Performance Guaranty, Kennedy Funding agreed to pay the costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by the Trustee in connection with the protection, defense, or enforcement of its rights under the Performance Guaranty.

187. In connection with the Workout Letter, each of Brookline Financing, Brookline Origination, Brookline Servicing, and Kennedy Funding acknowledged and agreed that it was liable for Fortis Bank's reasonable legal fees in connection with the discussions contemplated therein and in connection with the enforcement of Fortis Bank's rights under the Loan and Servicing Agreement and the Transaction Documents.

188. Plaintiffs have incurred, and will continue to incur, costs and expenses (including reasonable counsel fees) in connection with their enforcement of the Loan and

Servicing Agreement, the Sale Agreement, the Performance Guaranty and other Transaction Documents.

189. By reason of the foregoing, Plaintiffs are entitled to judgment against Brookline Financing, Brookline Origination, Brookline Servicing and Kennedy Funding for reasonable costs and expenses (including reasonable counsel fees and expenses), incurred in connection with their enforcement of the Loan and Servicing Agreement, the Sale Agreement, the Performance Guaranty and the other Transaction Documents in an amount to be determined at trial.

Prayer for Relief

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

(a) On Count I, on behalf of Fortis Bank, against Defendant Brookline Financing in an amount to be determined at trial, but not less than $282,055,480.36 in unpaid principal, together with accrued interest, which as of December 21, 2009 was $1,141,339.16, and which continues to accrue on the unpaid principal amount at the rate set forth in the Loan and Servicing Agreement;

(b) On Count II, on behalf of Plaintiffs, against all Defendants, for an order (i) directing Brookline Financing and Brookline Origination to assemble and deliver the Collateral to Fortis Bank; (ii) directing Brookline Origination to effectuate proper transfer of any Specified Loans to Brookline Financing or in the alternative correcting any errors in the Specified Loans; (iii) authorizing Fortis Bank to market and sell the Collateral in a commercially reasonable manner at auction; (iv) authorizing Fortis Bank to credit bid for the Collateral; (v) removing Brookline Servicing from its role as the Servicer of the Collateral and CSC from its role as Master Servicer; (vi) extinguishing any subordinate rights and junior interests (including contract claims) under the Transaction Documents; and (vii) directing foreclosure on, marketing of, and sale of the Collateral in accordance with the New York Uniform Commercial Code;

(c) On Count III, on behalf of Plaintiffs, against Defendants Brookline Financing, Brookline Servicing, and CSC, for breach of the Loan and Servicing Agreement in an amount to be determined at trial;

(d) On Count IV, on behalf of Plaintiffs, against Defendant Brookline Origination for breach of the Sale Agreement in an amount to be determined at trial;

(e) On Count V, on behalf of Plaintiffs, against Defendant Kennedy Funding, for indemnification under the Performance Guaranty in an amount to be determined at trial;

(f) On Count VI, on behalf of Fortis Bank, against Defendant Kennedy Funding, for Tortious Interference with the Loan and Servicing Agreement in an amount to be determined at trial;

(g) On Count VII, on behalf of Plaintiffs, against Defendants Brookline Financing, Brookline Origination, Brookline Servicing, and Kennedy Funding for reasonable costs and expenses, including reasonable counsel fees and expenses, incurred by Plaintiffs in connection with their enforcement of the Loan and Servicing Agreement, the Sale Agreement, the Performance Guaranty and the other Transaction Documents in an amount to be determined at trial;

(h) For an order directing Brookline Servicing to provide Plaintiffs the servicing records for the Collateral; and

(i) For such other relief as the Court deems just and proper.

Dated: New York, New York
February 4, 2010

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Attorneys for Plaintiff Manufacturers and Traders Trust Company, solely in its capacity as Trustee